

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:05CV251-1-MU**

KENNETH PATTON,	)	
	)	
	)	
Plaintiff,	)	
Vs.	)	<b>ORDER</b>
	)	
THOMAS LANCASTER, <u>et al.</u> ,	)	
	)	
Defendants.	)	
<hr style="width:45%; margin-left:0;"/>		

**THIS MATTER** comes before the Court upon Defendant May's Motion to Quash Service, filed October 20, 2005.

On July 5, 2005, Plaintiff filed a Complaint pursuant to 42 U.S.C. § 1983 against six defendants. On July 28, 2005, this Court dismissed two of the defendants and ordered the Clerk to issue summons and deliver it to the U.S. Marshal for service of process without additional cost on the remaining defendants.

Defendant May has filed a Motion to Quash service asserting that he was not effectively served. That is, the copy of Plaintiff's Summons and Complaint intended for Defendant Mays was delivered via certified mail to Mountain View Correctional Center and signed for by Beth Cain.<sup>1</sup> Defendant Mays was not employed at Mountain View at that time and the individual who signed for the certified mail was not his authorized agent. Such service does not comply with Rule 4(e) of the Federal Rules of Civil Procedure.

---

<sup>1</sup> Defendant May has attached an affidavit of Ms. Cain to his motion in which she sets forth that she was not an agent authorized to receive service of process for Defendant Mays. (Cain Aff. ¶ 6).

**IT IS, THEREFORE, ORDERED** that:

1. Defendant May's Motion to Quash Service is **GRANTED**; and
2. Clerk shall reissue summons and deliver it forthwith to the U.S. Marshal who will make service of process without additional cost on Defendant Mays in compliance with the mandates of Rule 4(e) of the Federal Rules of Civil Procedure.

**Signed: November 15, 2005**

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
Chief United States District Judge

